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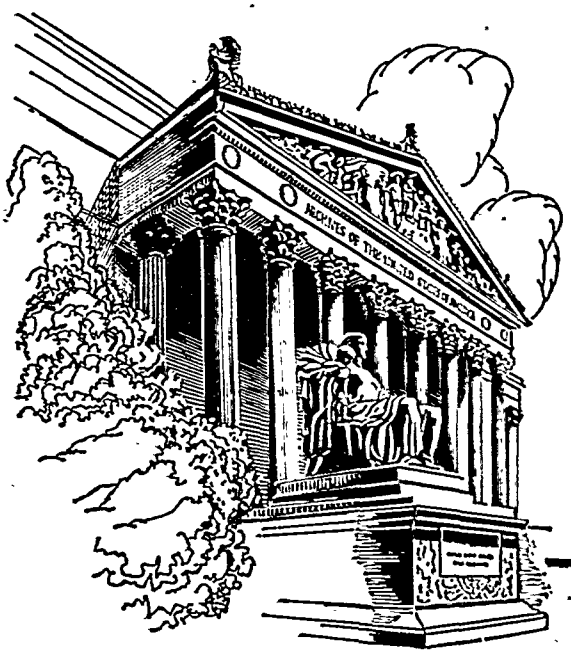

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Title 3—The President

EXECUTIVE ORDER 11574

Administration of Refuse Act Permit Program

By virtue of the authority vested in me as President of the United States, and in furtherance of the purposes and policies of section 13 of the Act of March 3, 1899, c. 425, 30 Stat. 1152 (33 U.S.C. 407), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et. seq.), the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661–666c), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), it is hereby ordered as follows:

SECTION 1. *Refuse Act permit program.* The executive branch of the Federal Government shall implement a permit program under the aforesaid section 13 of the Act of March 3, 1899 (hereinafter referred to as "the Act") to regulate the discharge of pollutants and other refuse matter into the navigable waters of the United States or their tributaries and the placing of such matter upon their banks.

SEC. 2. *Responsibilities of Federal agencies.* (a)(1) The Secretary shall, after consultation with the Administrator respecting water quality matters, issue and amend, as appropriate, regulations, procedures, and instructions for receiving, processing, and evaluating applications for permits pursuant to the authority of the Act.

(2) The Secretary shall be responsible for granting, denying, conditioning, revoking, or suspending Refuse Act permits. In so doing:

(A) He shall accept findings, determinations, and interpretations which the Administrator shall make respecting applicable water quality standards and compliance with those standards in particular circumstances, including findings, determinations, and interpretations arising from the Administrator's review of State or interstate agency water quality certifications under section 21(b) of the Federal Water Pollution Control Act (84 Stat. 108). A permit shall be denied where the certification prescribed by section 21(b) of the Federal Water Pollution Control Act has been denied, or where issuance would be inconsistent with any finding, determination, or interpretation of the Administrator pertaining to applicable water quality standards and considerations.

(B) In addition, he shall consider factors, other than water quality, which are prescribed by or may be lawfully considered under the Act or other pertinent laws.

(3) The Secretary shall consult with the Secretary of the Interior, with the Secretary of Commerce, with the Administrator, and with the head of the agency exercising administration over the wildlife resources of any affected State, regarding effects on fish and wildlife which are not reflected in water quality considerations, where the discharge for which a permit is sought impounds, diverts, deepens the channel, or otherwise controls or similarly modifies the stream or body of water into which the discharge is made.

(4) Where appropriate for a particular permit application, the Secretary shall perform such consultations respecting environmental amenities and values, other than those specifically referred to in paragraphs (2) and (3) above, as may be required by the National Environmental Policy Act of 1969.

(b) The Attorney General shall conduct the legal proceedings necessary to enforce the Act and permits issued pursuant to it.

SEC. 3. *Coordination by Council on Environmental Quality.* (a) The Council on Environmental Quality shall coordinate the regulations, policies, and procedures of Federal agencies with respect to the Refuse Act permit program.

(b) The Council on Environmental Quality, after consultation with the Secretary, the Administrator, the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, and the Attorney General, shall from time to time or as directed by the President advise the President respecting the implementation of the Refuse Act permit program, including recommendations regarding any measures which should be taken to improve its administration.

SEC. 4. *Definitions.* As used in this order, the word "Secretary" means the Secretary of the Army, and the word "Administrator" means the Administrator of the Environmental Protection Agency.

Richard Nixon

THE WHITE HOUSE,
December 23, 1970.

[F.R. Doc. 70-17461; Filed, Dec. 23, 1970; 1 : 48 p.m.]

Rules and Regulations

Title 7—AGRICULTURE

Chapter I—Consumer and Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

Standards for Dry Whey

A notice of proposed rule making covering the issuance of amendments to U.S. Standards for Dry Whey (7 CFR Part 58, Subpart O) was published in the FEDERAL REGISTER of October 21, 1970 (35 F.R. 16412). It afforded interested parties the opportunity to submit within 30 days to the Hearing Clerk written data, views, or arguments in connection with the proposal.

Statement of consideration. Three letters of comment were received, which contained two suggestions. One suggested change was editorial in nature and recommended an alternate way of referencing test methods. This suggestion was utilized. The other suggested change was for the use of a premise which says that if dry whey meets the bacteriological requirements of the standard there would be no need for pasteurization requirements for the cheese whey. This premise is unacceptable as cheese whey must be heat treated so as to assure complete destruction of all pathogenic bacteria (161° F. for 15 seconds or its equivalent in bacterial destruction) either prior to or during its manufacture into dry whey. The bacteriological requirement in the standard is not for the purpose of determining adequacy of pasteurization of the cheese whey, but is utilized primarily to indicate the degree of post pasteurization contamination of the finished product made therefrom. Except for the one change noted, the standard is hereby amended as proposed and will become effective January 31, 1971. Copies of the standard, as amended, may be obtained from the Dairy Division, C&MS, U.S. Department of Agriculture, Washington, D.C. 20250.

The U.S. Standards for Dry Whey are amended pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627).

The sections of Subpart O that have been amended are as follows: §§ 58.2601, 58.2603, 58.2604, 58.2605, 58.2606.

The amended Standards are as follows:

Subpart O—U.S. Standards for Dry Whey

DEFINITIONS

Sec.
58.2601 Dry whey.

U.S. GRADE

58.2602 Nomenclature of the U.S. grade.
58.2603 Basis for determination of U.S. grade.
58.2604 U.S. grade.
58.2605 U.S. grade not assignable.

TEST METHODS

58.2606 Test methods.

AUTHORITY: The provisions of this Subpart O issued under secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627.

Subpart O—U.S. Standards for Dry Whey [1]

DEFINITIONS

§ 58.2601 *Dry whey.*

"Dry whey" is the product resulting by spray drying sweet, fresh cheese whey which has been pasteurized either before or during the process of manufacture at a temperature of 161° F. for 15 seconds or its equivalent in bacterial destruction and to which no alkali or other chemical has been added.

U.S. GRADE

§ 58.2602 Nomenclature of the U.S. grade.

(a) *Nomenclature.* The nomenclature of the U.S. grade is U.S. Extra.

§ 58.2603 Basis for determination of U.S. grade.

The U.S. grade of dry whey is determined under this part on the basis of flavor and odor, physical appearance, bacterial estimate, butterfat content, scorched particle content, solubility index and titratable acidity.

§ 58.2604 U.S. grade.

(a) *U.S. Extra.* U.S. Extra grade dry whey conforms to the following requirements:

(1) Flavor and odor (applies equally to the reliquefied form): Free from non-whey flavors and odors.

(2) Physical appearance: Has a uniform light color; free from lumps that do not break up under moderate pressure; and practically free from brown and black scorched particles.

(3) Bacterial estimate: Not more than 50,000 per gram.

(4) Butterfat content: Not more than 1.25 percent.

(5) Moisture content: Not more than 5 percent.

(6) Scorched particle content: Not more than 15 mg.

(7) Solubility index: Not more than 1.25 ml.

(8) Titratable acidity: Not more than 0.16 percent.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

§ 58.2605 U.S. Grade not assignable.

Dry Whey shall not be assigned a U.S. Grade for one or more of the following reasons:

(a) Fails to meet the requirements for U.S. Extra Grade,

(b) The alkalinity of ash test when run at the option of the U.S. Department of Agriculture, or when requested by the buyer or seller, shows a test result of more than 225 ml. of 0.1 N HCl per 100 grams.

TEST METHODS

§ 58.2606 Test methods.

All required tests, and the optional test when specified, shall be performed in accordance with "Methods of Laboratory Analysis, DA Instruction No. 918–103 (dry milk products series), Dairy Divisions, C&MS, U.S. Department of Agriculture, Washington, D.C. 20250."

Effective date. The standard as amended shall become effective January 31, 1971.

Done at Washington, D.C., this 21st day of December 1970.

G. R. GRANGE,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 70-17373; Filed, Dec. 24, 1970; 8:45 a.m.]

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

Standards for Grades of Dry Buttermilk

A notice of proposed rule making covering the issuance of amendments to U.S. Standards for Grades of Dry Buttermilk (7 CFR Part 58, Subpart Q) was published in the FEDERAL REGISTER of October 21, 1970 (35 F.R. 16412). It afforded interested parties the opportunity to submit within 30 days to the Hearing Clerk written data, views, or arguments in connection with the proposal.

Statement of consideration. One letter of comment was received which suggested an editorial change as to the way in which test procedures could be referenced. The suggestion was accepted and is reflected in the following. Except for this one change the standards are hereby amended as proposed and will become effective January 31, 1971. Copies of the standard, as amended, may be obtained from the Dairy Division, C&MS, U.S. Department of Agriculture, Washington, D.C. 20250.

U.S. Standards for Grades of Dry Buttermilk are amended pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202–208, 60

Stat. 1087, as amended; 7 U.S.C. 1621–1627).

The sections of Subpart Q that have been amended are as follows: §§ 58.2651, 58.2653, 58.2654, 58.2655, 58.2656, 58.2657.

The standards as amended are as follows:

Subpart Q—U.S. Standards for Grades of Dry Buttermilk

DEFINITION

Sec.
58.2651 Dry buttermilk.

U.S. GRADES

58.2652 Nomenclature of U.S. grades.
58.2653 Basis for determination of U.S. grades.
58.2654 U.S. Extra grade.
58.2655 U.S. Standard grade.
58.2656 U.S. Grade not assignable.

TEST METHODS

58.2657 Test methods.

AUTHORITY: The provisions of this Subpart Q issued under secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627.

Subpart Q—U.S. Standards for Grades of Dry Buttermilk [1]

DEFINITION

§ 58.2651 Dry buttermilk.

"Dry buttermilk" (made by the spray process or the atmospheric roller process) is the product resulting from drying liquid buttermilk derived from the manufacture of sweet cream butter to which no alkali or other chemical has been added and which has been pasteurized either before or during the process of manufacture at a temperture of 161° F. for 15 seconds or its equivalent in bacterial destruction.

U.S. GRADES

§ 58.2652 Nomenclature of U.S. grades.

(a) *Nomenclature.* The nomenclature of U.S. grades is U.S. Extra and U.S. Standard.

§ 58.2653 Basis for determination of U.S. grades.

The U.S. grades of dry buttermilk are determined hereunder on the basis of flavor and odor, physical appearance, bacterial estimate, butterfat content, moisture content, scorched particle content, solubility index, and titratable acidity.

§ 58.2654 U.S. Extra grade.

The requirements of the U.S. Extra grade differ for dry buttermilk made by the spray process from that made by the atmospheric roller process.

(a) *Spray process.* U.S. Extra grade dry buttermilk manufactured by the spray process conforms to the following requirements:

(1) Flavor and odor (applies equally to the reliquefied form): Free from non-buttermilk flavors and odors.

(2) Physical appearance: Is cream to light brown color; free from lumps that do not break up under slight pressure; and practically free from black and brown scorched particles.

(3) Bacterial estimate: Not more than 50,000 per gram.

(4) Butterfat content: Not less than 4.50 percent.

(5) Moisture content: Not more than 4 percent.

(6) Scorched particle content: Not more than 15 mg.

(7) Solubility index: Not more than 1.25 ml.

(8) Titratable acidity: Not less than 0.10 percent; not more than 0.18 percent.

(b) *Roller process.* U.S. Extra grade dry buttermilk manufactured by the roller process conforms to the requirements in paragraph (a) of this section except that the solubility index is not more than 15 ml., and the scorched particle content is not more than 22.5 mg.

§ 58.2655 U.S. Standard grade.

The requirements of the U.S. Standard grade differ for dry buttermilk manufactured by the spray process from that manufactured by the atmospheric roller process:

(a) *Spray process.* U.S. Standard grade dry buttermilk manufactured by the spray process conforms to the following requirements:

(1) Flavor and odor (applies equally to the reliquefied form): Has not more than slight unnatural flavors and odors and has no offensive flavors and odors.

(2) Physical appearance: Is cream to light brown color; free from lumps that do not break up under moderate pressure; and contains brown and black scorched particles to not more than a moderate degree.

(3) Bacterial estimate: Not more than 200,000 per gram.

(4) Butterfat content: Not less than 4.50 percent.

(5) Moisture content: Not more than 5 percent.

(6) Scorched particle content: Not more than 22.5 mg.

(7) Solubility index: Not more than 2 ml.

(8) Titratable acidity: Not less than 0.10 percent; not more than 0.20 percent.

(b) *Roller process.* U.S. Standard grade dry buttermilk manufactured by the roller process conforms to the requirements prescribed in paragraph (a) of this section except that the solubility index is not more than 15 ml. and the scorched particle content is not more than 32.5 mg.

§ 58.2656 U.S. Grade not assignable.

Dry Buttermilk shall not be assigned a U.S. Grade for one or more of the following reasons: (a) Fails to meet the requirements for U.S. Extra or U.S. Standard Grade, (b) the alkalinity of ash test when run at the option of U.S. Department of Agriculture or when requested by the buyer or seller, shows a test result of more than 125 ml. of 0.1 N HCl per 100 grams.

TEST METHODS

§ 58.2657 Test methods.

All required tests, and the optional test when specified, shall be performed in accordance with "Methods of Laboratory Analysis, DA Instruction, No. 918–103 (dry milk products series), Dairy Division, C&MS, U.S. Department of Agriculture, Washington, D.C. 20250."

Effective date. The standards as amended shall become effective January 31, 1971.

Done at Washington, D.C., this 21st day of December 1970.

G. R. GRANGE,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 70-17374; Filed, Dec. 24, 1970; 8:45 a.m.]

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

Standards for Grades of Dry Whole Milk

A notice of proposed rule making covering the issuance of amendments to U.S. Standards for Grades of Dry Whole Milk (7 CFR Part 58, Subpart S) was published in the FEDERAL REGISTER of October 16, 1970 (35 F.R. 16257). It afforded interested parties the opportunity to submit within 30 days to the Hearing Clerk written data, views, or arguments in connection with the proposal.

Statement of consideration. Inasmuch as no comments were received concerning the proposed amendments, the standards are hereby amended as proposed and will become effective January 31, 1971. Copies of the standard, as amended, may be obtained from the Dairy Division, C&MS, U.S. Department of Agriculture, Washington, D.C. 20250.

U.S. Standards for Grades of Dry Whole Milk are amended pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202–208, 69 Stat. 1087, as amended; 7 U.S.C. 1621–1627).

The sections of Subpart S that have been amended are as follows: §§ 58.2701 (a), 58.2074, 58.2707.

The standards as amended are as follows:

Subpart S—U.S. Standards for Grades of Dry Whole Milk

Sec.
58.2701 Dry whole milk.

U.S. GRADE

58.2702 Nomenclature of U.S. grades.
58.2703 Basis for determination of U.S. grades.
58.2704 U.S. Premium grade.
58.2705 U.S. Extra grade.
58.2706 U.S. Standard grade.

TEST METHODS

58.2707 Test methods.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

EXPLANATION OF TERMS

Sec.
58.2708 Explanation of terms.

AUTHORITY: The provisions of this Subpart S issued under secs. 202–208, 69 Stat. 1087, as amended; 7 U.S.C. 1621–1627.

Subpart S—U.S. Standards for Grades of Dry Whole Milk

§ 58.2701 Dry whole milk.

"Dry whole milk" (made by the spray process or the atmospheric roller process) is the product resulting from the removal of water from milk and contains the lactose, milk proteins, milk fat, and milk minerals in the same relative proportions as in the fresh milk from which made.

(a) The term "milk," when used in this part, means milk produced by healthy cows and pasteurized at a temperature of 161° F. for 15 seconds or its equivalent in bacterial destruction before or during the manufacture of the dry whole milk.

U.S. GRADE

§ 58.2702 Nomenclature of U.S. Grades.

(a) *Nomenclature.* The nomenclature of U.S. Grades is U.S. Premium, U.S. Extra, and U.S. Standard.

§ 58.2703 Basis for determination of U.S. grades.

The U.S. grades of dry whole milk are determined hereunder on the basis of flavor and odor, physical appearance, bacterial estimate, butterfat content, coliform estimate, copper content, iron content, moisture content, oxygen content, scorched particle content, solubility index, and titratable acidity.

§ 58.2704 U.S. Premium grade.

Dry whole milk manufactured by the spray process conforms to the following requirements:

(a) Flavor and odor (applies equally to the reliquefied form): Sweet. It may have slight cooked flavors and odors, but is free from all other off-flavors and odors.

(b) Physical appearance: Is white or light cream color; free from lumps that do not break up under slight pressure; and free from noticeable brown and black scorched particles.

(c) Bacterial estimate: Not more than 30,000 per gram.

(d) Butterfat content: Not less than 26 percent.

(e) Coliform estimate: Not more than 90 per gram.

(f) Copper content: [2] Not more than 1.5 p.p.m.

(g) Iron content: [2] Not more than 10 p.p.m.

(h) Moisture content: Not more than 2.25 percent.

(i) Oxygen content: Not more than 2 percent.

(j) Solubility index: Not more than 0.50 ml.

(k) Scorched particle content: Not more than 7.5 mg.

(l) Titratable acidity: Not more than 0.15 percent.

§ 58.2705 U.S. Extra grade.

(a) *Spray process.* Dry whole milk manufactured by the spray process conforms to the following requirements:

(1) Flavor and odor (applies equally to the reliquefied form): It may have definite cooked flavors and odors and other off-flavors to a slight degree but is free from objectionable flavors and odors.

(2) Physical appearance: Is white or light cream color; free from lumps that do not break up under moderate pressure; and practically free from brown and black scorched particles.

(3) Bacterial estimate: Not more than 50,000 per gram.

(4) Butterfat content: Not less than 26 percent.

(5) Coliform estimate: No requirement.

(6) Copper content: [2] Not more than 1.5 p.p.m.

(7) Iron content: [2] Not more than 10 p.p.m.

(8) Moisture content: Not more than 2.5 percent.

(9) Oxygen content: If gas packed, not more than 3 percent.

(10) Scorched particle content: Not more than 15 mg.

(11) Solubility index: Not more than 0.50 ml.

(12) Titratable acidity: Not more than 0.15 percent.

(b) *Roller process.* Dry whole milk manufactured by the roller process conforms to the requirements in paragraph (a) of this section, except that the solubility index is not more than 15 ml., the scorched particle content is not more than 22.5 mg., and the moisture content is not more than 3 percent.

§ 58.2706 U.S. Standard grade.

(a) *Spray process.* Dry whole milk manufactured by the spray process conforms to the following requirements:

(1) Flavor and odor (applies equally to the reliquefied form): It may have definite scorched and storage flavors and odors, but has no other objectionable flavors and odors.

(2) Physical appearance: Is white or light cream color; free from lumps that do not break up under moderate pressure; and may have moderate amount of brown and black scorched particles.

(3) Bacterial estimate: Not more than 100,000 per gram.

(4) Butterfat content: Not less than 26 percent.

(5) Coliform estimate: No requirement.

(6) Copper content: No requirement.

(7) Iron content: No requirement.

(8) Moisture content: Not more than 3 percent.

(9) Oxygen content: No requirement.

(10) Scorched particle content: Not more than 22.5 mg.

(11) Solubility index: Not more than 1 ml.

(12) Titratable acidity: Not more than 0.17 percent.

(b) *Roller process.* Dry whole milk manufactured by the roller process conforms to the requirements prescribed in paragraph (a) of this section except that the solubility index is not more than 15 ml. the scorched particle content is not more than 32.5 mg., and the moisture content is not more than 4 percent.

TEST METHODS

§ 58.2707 Test methods.

All required tests shall be performed in accordance with "Methods of Laboratory Analysis, DA Instruction No. 918–103-(dry milk products series), Dairy Division, C&MS, U.S. Department of Agriculture, Washington, D.C. 20250".

EXPLANATION OF TERMS

§ 58.2708 Explanation of terms.

(a) *Explanation of terms with respect to flavor and odor*—(1) *Slight.* Detected only upon critical examination.

(2) *Definite.* Not intense but readily detectable.

(3) *Objectionable.* Flavors and odors, such as fishy, cheesy, scorched, storage, oxidized, rancid, tallowy, soapy, utensil, or others equally objectionable.

Effective date. These standards as amended shall become effective January 31, 1971.

Done at Washington, D.C., this 21st day of December 1970.

G. R. GRANGE,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 70-17375; Filed, Dec. 24, 1970; 8:45 a.m.]

[2] This test is not required if equipment surfaces coming in contact with the milk are free of copper, iron, or copper alloys.

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Navel Orange Reg. 218]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.518 Navel Orange Regulation 218.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907, 35 F.R. 16359), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and

order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 22, 1970.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period December 25, 1970, through December 31, 1970, are hereby fixed as follows:

(i) District 1: 384,000 cartons;
(ii) District 2: 60,000 cartons;
(iii) District 3: 16,000 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 23, 1970.

F. L. SOUTHERLAND,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 70-17485; Filed, Dec. 23, 1970; 4:12 p.m.]

[Lemon Reg. 460]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.760 Lemon Regulation 460.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 22, 1970.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period December 27, 1970, through January 2, 1971, are hereby fixed as follows:

(i) District 1: 28,000 cartons;
(ii) District 2: 60,000 cartons;
(iii) District 3: 88,000 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 23, 1970.

F. L. SOUTHERLAND,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 70-17486; Filed, Dec. 24, 1970; 8:49 a.m.]

PART 966—TOMATOES GROWN IN FLORIDA

Reestablishment of Districts

Notice of rule making with respect to a proposal to reestablish Districts No. 1 and No. 2 of Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966), was published in the November 18, 1970, FEDERAL REGISTER (35 F.R. 17745). This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

Interested persons were allowed 30 days for filing data, views, or arguments pertaining thereto. None was filed.

Statement of consideration. Currently District No. 1 consists of the counties of Dade and Broward. The change removes Broward County from District No. 1 and adds it to District No. 2. In recommending this change, the Committee indicated such redistricting would result in more efficient administration of the program and provide for better representation on the Committee for producers in Broward County.

Broward County is a continuation of the southern part of District No. 2 and its production and marketing practices are the same as those in District No. 2. Economies in administration should result from this change because it will no longer be necessary for the management to separate production and marketing data for the contiguous area of District No. 2 of Broward County.

The interest of Broward County producers will be better represented in that no producers from that county are presently on the Committee and their cultural practices differ from those in Dade County, which has always supplied District No. 1 members to the Committee.

In view of the foregoing, and pursuant to § 966.25 and the recommendation of the Florida Tomato Committee, Districts No. 1 and No. 2 are reestablished as follows:

REESTABLISHMENT OF DISTRICTS

§ 966.160 Reestablishment of districts.

(a) District No. 1: The county of Dade in the State of Florida.

(b) District No. 2: The counties of Brevard, Glades, Indian River, Martin, Osceola, Okeechobee, Palm Beach, St. Lucie, and Broward in the State of Florida.

(c) Terms used in this section have the same meaning as when used in said marketing agreement and this part.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: Dated December 22, 1970, to become effective 30 days after publication in the FEDERAL REGISTER.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 70-17415; Filed, Dec. 24, 1970; 8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 70-EA-101; Amdt. 39-1132]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to Piper PA-31 type aircraft.

There have been reports of cracks occurring in the elevator and rudder spars and elevator butt ribs of Piper PA-31 airplanes. Since this is a deficiency which can occur in other airplanes of the same type design, an airworthiness directive is being issued which will require an initial and repetitive inspection, but which will permit incorporation of a corrective kit so as to permit elimination of the repetitive inspections.

Since the foregoing requires expeditious adoption of this airworthiness directive, notice and public procedure hereon are unnecessary and the directive may be made effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new Airworthiness Directive:

PIPER AIRCRAFT. Applies to Piper Aircraft Models PA-31 and PA-31-300 Serial Nos. 31-2 through 31-694, certificated in all categories.

Compliance required as indicated.

To detect cracks in the elevator and rudder spars, and elevator butt ribs accomplish the following:

(a) Within the next 100 hours in service after the effective date of this Airworthiness Directive, unless already accomplished within the last 100 hours in service, and thereafter at intervals not to exceed 100 hours in service, inspect in accordance with Piper Service Bulletin No. 323 dated September 21, 1970 and later changes thereto, or in accordance with an equivalent inspection program approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(b) If cracks are found, the defective parts must be replaced as specified in Piper Service Bulletin No. 323 dated September 21, 1970, and later changes thereto or replaced or repaired in a manner approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region before further flight, except that the airplane may be flown in accordance with FAR 21.197 to a base where the repair can be made.

(c) Upon the incorporation of Piper Elevator and Rudder Hinge Installation Kit No. 760 465 or equivalent modification approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, the repetitive inspection required under paragraph (a) may be discontinued.

(d) Report the results of inspection findings required by this Airworthiness Directive to the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region (reporting approved by Bureau of the Budget under BOB No. 04-R0174).

This amendment is effective December 29, 1970.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on December 9, 1970.

ROBERT M. BROWN,
Acting Director, Eastern Region.

[F.R. Doc. 70-17408; Filed, Dec. 24, 1970; 8:47 a.m.]

[Docket No. 70-EA-60; Amdt. 39-1131]

PART 39—AIRWORTHINESS DIRECTIVES

Pratt & Whitney Aircraft Engines

On page 14462 of the FEDERAL REGISTER for September 15, 1970, the Federal Aviation Administration published a proposed airworthiness directive which is applicable to Pratt & Whitney type JT8D aircraft engines.

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulations have been received.

A review of this problem, since promulgation of the notice, establishes a decrease in the failure rate because of inspections by owners and operators, thereby permitting a relaxation of the 600-hour interval to 900 hours. Further, it appears that the 6,000-hour requirement of replacement with stronger blades is now required under the overhaul manuals. Thus, this procedure would be redundant and will be eliminated from the airworthiness directive.

In view of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 F.R. 13697), § 39.13 of the Federal Aviation Regulations is amended hereby and the airworthiness directive adopted as follows:

1. Amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

PRATT AND WHITNEY AIRCRAFT. Applies to all model JT8D series turbofan engines. Compliance required as indicated.

To prevent failure of the first stage compressor rotor blades as the result of improperly machined blade roots, accomplish the following:

(a) Within the next 900 hours in service after the effective date of this AD, unless already accomplished, visually inspect all P/N 487801, 511001 change letter L or earlier, 594601 and 616601 change letter B or earlier first stage compressor rotor blades, for tool marks within the radius of the Z plane platform on both sides of the blade root area. If tool marks are observed, replace the blade.

(b) Upon submission of substantiating data through an FAA Maintenance Inspector by an owner or operator to the Chief, Engineering and Manufacturing Branch, FAA Eastern Region, compliance time may be adjusted.

(Pratt & Whitney letter PSE:HHB: 0-4-6-1-33 dated April 6, 1970, pertains to this subject.)

This amendment is effective December 29, 1970.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on December 15, 1970.

LOUIS J. CARDINALI,
Acting Director, Eastern Region.

[F.R. Doc. 70-17407; Filed, Dec. 24, 1970; 8:47 a.m.]

[Airspace Docket No. 70-CE-117]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

On November 14, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 17555) stating that the Federal Aviation Administration was proposing an amendment to Part 73 of the Federal Aviation Regulations that would alter Restricted Area R-4301 at Camp Ripley, Minn.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. No comments were received.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., January 22, 1971, as hereinafter set forth.

Section 73.43 (35 F.R. 460, 2335) is amended as follows:

In R-4301 Camp Ripley, Minn., the designated altitudes and time of designation is amended to read as follows:

Surface to 27,000 feet MSL, May 1 through October 31; surface to 14,500 MSL, Saturday and Sunday, November 1 through April 30; and at other altitudes and times specified by NOTAM issued 24 hours in advance.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on December 22, 1970.

T. McCORMACK,
Acting Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 70-17406; Filed, Dec. 24, 1970; 8:47 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 27—CANNED FRUITS AND FRUIT JUICES

Canned Apricots; Standard of Quality Pertaining to Minimum Weights

In the matter of amending the standard of quality for canned apricots (21 CFR 27.11) to delete the minimum weight requirements for apricot halves and quarters:

A notice of proposed rule making in the above-identified matter was published in the FEDERAL REGISTER of May 16, 1970 (35 F.R. 7654), based on a petition submitted by the National Canners Association, 1133 20th Street NW., Washington, DC 20036.

The only comment received in response to the proposal favored it.

On the basis of information submitted in the petition, the comment received, and other relevant information, the Commissioner concludes that adopting the proposal will promote honesty and fair dealing in the interest of consumers.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120): *It is ordered*, That § 27.11 (a) and (c) be revised as follows:

§ 27.11 Canned apricots; quality; label statement of substandard quality.

(a) The standard of quality for canned apricots is as follows:

(1) All units tested in accordance with the method prescribed in paragraph (b) of this section are pierced by a weight of not more than 300 grams.

(2) In the cases of whole apricots, halves, and quarters, the weight of the largest unit in the container is not more than twice the weight of the smallest unit therein.

(3) Not more than 20 percent of the units in the container are blemished with scab, hail injury, discoloration, or other abnormalities.

(4) In the cases of whole apricots, halves, and quarters, all units are untrimmed, or are so trimmed as to preserve normal shape.

(5) Except in the case of mixed pieces of irregular sizes and shapes, not more than 5 percent of the units in a container of 20 or more units, and not more than 1 unit in a container of less than 20 units, are crushed or broken. (A unit which has lost its normal shape because of ripeness and which bears no mark of crushing shall not be considered to be crushed or broken.)

* * * * * *

(c) If the quality of canned apricots falls below the standard prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard quality specified in § 10.7(a) of this chapter, in the manner and form therein specified; but in lieu of such general statement of substandard quality, the label may bear the alternative statement "Below Standard in Quality _____," the blank to be filled in with the words specified after the corresponding number of each subparagraph of paragraph (a) of this section which such canned apricots fail to meet, as follows: (1) "Not Tender"; (2) "Mixed Sizes"; (3) "Blemished"; (4) "Unevenly Trimmed"; (5) "Partly Crushed or Broken." Such alternative statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "apricots" and any words and statements required or authorized to appear with such name by § 27.10(b).

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and such objections must be supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in six copies.

Effective date. This order shall become effective 60 days after its date of publication in the FEDERAL REGISTER, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be given by publication in the FEDERAL REGISTER.

(Secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371)

Dated: December 14, 1970.

SAM D. FINE,
Associate Commissioner for Compliance.

[F.R. Doc. 70-17362; Filed, Dec. 24, 1970; 8:45 a.m.]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter II—Forest Service, Department of Agriculture

PART 251—LAND USES

Recreation Use Fees

Section 251.25a, Part 251, Title 36 of Code of Federal Regulations, as amended in FEDERAL REGISTER dated May 26, 1970 (35 F.R. 8230), is revised to read as follows:

§ 251.25a Payment for occupancy and use of designated recreation areas.

A fee will be charged for occupancy and use of designated National Forest recreation areas as established by section 2(a) of the Land and Water Conservation Fund Act of 1965, as amended. Entrance, admission, or other recreational use of land, facilities, or services thereon will be permitted only upon payment of the required fee. Such fee will be established by the Chief of the Forest Service or his delegate in accordance with Executive Order 11200 dated February 26, 1965 (30 F.R. 2645), and regulations of the Secretary of the Interior dated November 25, 1970 (35 F.R. 18376), as supplemented or amended. Clear notice that a fee has been established will be posted at each area. Any violation of this section is punishable by a fine of not more than $100.

(Sec. 2, 78 Stat. 897, as amended)

Effective date. This revision shall become effective on January 1, 1971.

T. K. COWDEN,
Assistant Secretary of Agriculture.

[F.R. Doc. 70-17416; Filed, Dec. 24, 1970; 8:48 a.m.]

Title 46—SHIPPING

Chapter IV—Federal Maritime Commission

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

[General Order 7 (Rev.), Amdt. 1; Docket No. 69-38]

PART 528—SELF-POLICING SYSTEMS

Enlargement of Time To Comply

The Commission's final rules in this proceeding, prescribing mandatory self-policing provisions, were published in the

FEDERAL REGISTER on October 28, 1970 (35 F.R. 16679). Section 528.5 *Filing of amendments to approved agreement* provided sixty (60) days from the date of publication of the rules for previously approved conference agreements to be amended to conform to the requirements of the new rules.

Numerous conferences have requested an extension of time within which to conform their agreements. The Commission is of the opinion that an extension of time is warranted and is hereby extending the time for compliance to March 1, 1971.

Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553) and sections 15, 21, and 43 of the Shipping Act, 1916 (46 U.S.C. 814, 820, and 841(a)), the second sentence of § 528.5 of Title 46, CFR is hereby revised to read: "Such amendments shall be filed with the Commission on or before March 1, 1971."

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[F.R. Doc. 70-17366; Filed, Dec. 24, 1970; 8:45 a.m.]

[General Order 27, Amdt. 1; Docket No. 70-39]

PART 542—FINANCIAL RESPONSIBILITY FOR OIL POLLUTION CLEANUP

Fees

On September 30, 1970, the Federal Maritime Commission published in the FEDERAL REGISTER (35 F.R. 15216) regulations to implement the financial responsibility provisions of section 11(p)(1) of the Federal Water Pollution Control Act (the Act), as amended by the Water Quality Improvement Act of 1970 (84 Stat. 97). These regulations, designated Commission General Order 27, set forth the procedures whereby the owner or operator of every vessel over 300 gross tons, including any barge of equivalent size, using any port or place in the United States or the navigable waters of the United States, must evidence financial responsibility to meet the liability to the United States to which such vessel could be subjected for the discharge of oil into or upon the waters of the United States.

Thereafter, by notice published in the FEDERAL REGISTER on October 20, 1970 (35 F.R. 15216), the Commission served notice that it was considering the addition of a new § 542.9 to General Order 27. The stated purpose of this proposed amendment is the assessment of fees for the processing of applications and the issuance of Certificates of Financial Responsibility (Oil Pollution).

The Commission's action in proposing a schedule of fees was based on the provisions of title V of the Independent Offices Appropriation Act of 1952, 31 U.S.C. 483(a), hereafter referred to as "Title V", wherein Congress stated "that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared or issued by any Federal agency * * * to or for any person * * * shall be self-sustaining to the full extent possible." In order to bring about the accomplishment of this objective, Title V authorizes the head of each agency to prescribe by regulation such fees and charges as he shall determine "to be fair and equitable taking into consideration direct and indirect cost to the government, value to the recipient, public policy or interest served and other pertinent facts."

In arriving at its proposed fee schedule, the Commission was guided by the Bureau of the Budget Circular No. A-25, dated September 23, 1959, which sets forth general policies for developing a fair, equitable and uniform system of charges for certain government services and property so as to implement the applicable provisions of Title V. Essentially, Circular No. A-25 requires that a reasonable charge be made to each recipient for a measurable unit or amount of Federal Government service from which he derives a "special benefit" in order that the Government recover the full cost of rendering that service.

In accordance with the Government's clearly established policy that recipients of special benefits conveyed by a Federal agency should pay a reasonable charge for benefits received, the Commission determined that the public interest would be served by the establishment of a fair and equitable schedule of fees related to its certification activities under General Order 27. As the Commission explained in the preamble to its notice of proposed rule making:

> Since the Commission anticipates the receipt of many thousands of applications under section 11(p)(1) of the Water Quality Improvement Act of 1970 and its General Order 27, the Commission is contemplating the assessment of application fees to offset in some part the cost to the Government for processing the applications.

In response to the notice of proposed rule making, 10 comments were submitted by, or on behalf of, the American Tunaboat Association (ATA), the American Waterways Operators, Inc. (AWO), the Baltic and International Maritime Conference (BIMCO), the Foreign Shipowners Association of the Pacific Coast (FSA/PC), the International Committee of Passenger Lines (ICPL), the Lake Carriers' Association (LCA), Lykes Bros. Steamship Co., Inc. (Lykes), the National Waterways Conference (NWC), and the American Institute of Merchant Shipping (AIMS), with whom the London Group of Shipowners' Protection and Indemnity Associations joined. The Commission has carefully considered the position of all these parties and the final rules promulgated herein have been drafted with the parties' comments and arguments in mind.

While a few commentators do not disagree in principle with the Commission's proposed assessment of fees and charges, the vast majority of the parties commenting are solidly in opposition to the Commission's promulgation of the proposed rule. The arguments advanced in the unfavorable comments range from general objections relating to the Commission's authority to impose a fee program to specific objections directed toward the level of the proposed fees themselves. Accordingly, we will discuss those arguments within appropriate breakdowns. Arguments questioning the Commission's authority to establish user fees will be considered first, followed by a paragraph-by-paragraph discussion of the proposed rule and any comments directed thereto.

The contention most frequently expressed by the parties commenting is that the Commission lacks the authority to promulgate the proposed rule and impose "user charges" for the filing of applications and the issuance of certificates under General Order 27. ICPL points out that "unlike some other oil pollution statutes", the Federal Water Pollution Control Act contains no provisions which would allow the Commission to impose any fees or charges whatever. Nor does ICPL see any justification for the Commission's imposition of fees "even under the most liberal interpretation of section 483(a) [Title V]." A number of other commentators, including AIMS, AWO, FSA/PC, LCA, and NWC, share the view that the proposed regulation is authorized neither by Title V, nor by Budget Circular No. A-25.

The challenge to the Commission's authority to impose "user charges" advanced by ICPL, FSA/PC, LCA, and AIMS, is for the most part, grounded on the contention that the proposed charges do not fall within the congressional intent as expressed in Title V. The position taken by these parties is essentially that the certificate of financial responsibility for which the vessel owner must make application confers no personal "benefit," "privilege," or "similar thing of value or utility," within the meaning of Title V, upon the vessel owner or operator or, indeed, upon the maritime industry in general. In this regard, it is pointed out by FSA/PC that a certificate of financial responsibility "qualifies no one to enter a trade" or in any way confers a "privilege which the government has the authority to withhold."

Allegedly, whatever benefits flow from the financial responsibility provisions of the Act inure to the benefit of the United States and the public at large and not the individual steamship owner or operator. LCA and ICPL consider the financial responsibility provisions as benefitting solely the United States since the provisions relate to the vessel owner or operator's responsibility to the United States to reimburse it for cost of oil spill cleanup. AIMS and FSA/PC on the other hand, view the general public and tax paying citizens as also benefitting from the provisions of the Act since it results in the cleanup of oil discharges. All parties appear to be in agreement with AIMS and FSA/PC, however, that section 11(p)(1) created no benefit for a vessel owner or operator.

Moreover, FSA/PC, joined by AWO, argue that, in addition to being unauthorized by the governing statute, the

Commission's "user charge" regulations are also unauthorized by the controlling circular of the Bureau of the Budget. In support of this position, both parties advance much the same arguments made in challenging the Commission's statutory authority to issue the proposed rule. They contend that no "special benefit", within the meaning of Budget Circular No. A–25,[1] has been conferred upon steamship owners or operators for which a charge may be imposed. It is the opinion of AWO that "the certificate recipient gets nothing of value" but rather is "merely permitted to continue doing what he has always done * * * : navigate the waters of the United States." Consistent with the argument that the beneficiaries of the financial responsibility provisions of the Act is the "general public," AWO and FSA/PC contend that the present situation falls within the category provided in Circular A–25 for which "no charge should be made."[2]

We feel that the imposition of "user charges," in connection with an application for a certificate of financial responsibility, is clearly authorized by Title V, as well as Budget Cirular No. A–25. Contrary to the contentions of a number of commentators, the Commission's certificate of financial responsibility does, within the meaning of Title V, confer a "benefit" upon steamship owners or operators for which a fee or charge may be assessed. The "benefit" of a certificate to a steamship owner or operator is obvious. By law, after April 3, 1971, every vessel "using any port or place in the United States or the navigable waters of the United States" must have established its financial responsibility to the United States for oil discharge cleanup. Any vessel owner or operator who does not have a certificate of financial responsibility, issued by the Commission, by that date can no longer legally operate in U.S. waters. Thus, a certificate of financial responsibility clearly confers upon its recipient the privilege of using this country's navigable waters. We believe that this extra benefit should warrant the imposition of an equitable fee, particularly since Title V spells out "service," "privilege," and "certificate" as categories for which fees are recommended.

In support of their argument that they derive "nothing of value" for the certificates, some commentators make much of the contention that the certificate recipient is merely permitted to continue doing what he has always done. Admittedly, the certificate does not qualify the recipient to do anything more than he did before, that is, navigate the waters of the United States. What these commentators overlook, however, is that regardless of what vessel owners or operators were permitted to do before April 3, 1971, after that date they can be denied the use of U.S. waters if they have not been issued a certificate. Considered in this light, it can scarcely be argued that the certificate confers no "thing of value or utility", within the meaning of Title V, upon the vessel owner or operator.

For much the same reasons as those set forth above, we believe that the Commission's certificate of financial responsibility also represents, within the meaning of Circular No. A–25, "* * * a service (or privilege) [which] provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large" for which "user charges" may be imposed. That the U.S. Government and the general public may also benefit from the issuance of certificates of financial responsibility does not deter us from this view. While the general public is a prime beneficiary of the Commission's certification activities, it cannot be said by reason of this fact that substantial private benefits are not simultaneously conferred upon certificants. The certificant, by virtue of his certificate, derives a benefit which is above and beyond that which accrues to the general public. He benefits from the certificate for the simple reason that the certificate allows him to do what he otherwise could not do without that certificate, namely, trade or operate in U.S. waters. Since the recipient of a Commission certificate is clearly an "identifiable" ultimate beneficary of a Commission service, we feel justified in imposing a fair and reasonable charge upon him for that service.

While all parties who have had occasion to comment on the Commission's proposed rules relating to the certification of vessels either in the present proceeding or in the earlier one in Docket No. 70–25 appear to concede that even foreign-flag vessels exercising their "right of innocent passage" under the 1958 Convention on the Territorial Sea and the Contiguous Zone[3] must comply with the financial responsibility requirements of section 11(p)(1) of the Act, as implemented by Commission General Order 27, ICPL takes the position herein that the assessment of a fee in conjunction with the issuance of a certificate of financial responsibility to a vessel exercising its "right of innocent passage" contravenes the provisions of Article 18 of the Convention which states that:

> No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

We do not agree. The Commission's proposed "user charge" is clearly not a "charge" assessed to foreign-flag vessels "by reason only of their passage through the territorial sea" of the United States. While a foreign vessel exercising its right of innocent passage would be required to obtain a certificate for which a fee would be assessed, that fee is only indirectly related to its innocent passage. The fee to be levied is for the issuance of certificates of financial responsibility, not a "toll" upon a vessel's exercise of its right of innocent passage. Thus, we believe that so long as the fees assessed in connection with the issuance of certificates are imposed on vessels of all nations indiscriminately, they do not run afoul of the Convention.

ICPL also expresses its opinion that the fact that the charge imposed upon these carriers is not directly related to the work of the administrative agency but is "paid into the Treasury as miscellaneous receipts" puts it, insofar as these carriers are concerned, in the category of a tax "which is contrary to the principles of 26 U.S.C. 872 and 883 exempting foreign carriers from the payment of such tax in those instances where the flag state accords similar privileges to the vessels of the United States." While this argument might have superficial appeal, it ignores the basic and established distinction between a fee and a tax. A tax is an enforced contribution exacted pursuant to legislative authority for the purpose of raising revenue to be used for public or governmental purposes, and not as a payment for a special privilege or a service rendered. United States v. Butler, 297 U.S. 1 (1935), Houck v. Little River Drainage District 239 U.S. 254 (1915). On the other hand, a fee is always voluntary, in the sense that the party who pays it originally has of his own volition, asked a public officer to perform certain services for him, which presumably bestows upon him a benefit not shared by other members of society. Manifestly, the legislative intent of Title V was that fees assessed pursuant thereto were intended not for support of the Government as a whole, but rather as a means of sustaining to the fullest extent feasible those agencies of the Government which bestow special privileges and services upon certain individuals who may apply for those privileges and services. Since the charges proposed by this Commission fall squarely within the legislative intent of Title V, they clearly constitute fees and not taxes.

Though the majority of the commentators appear to accept the provisions of Title V as the will of Congress, NWC questions the "propriety" of that statute. In expressing "doubt as to the real Congressional intent" of the enabling legislation, NWC argues that Congress had "no realistic opportunity" to consider the implications of Title V since it was attached as a "rider" to an appropriations act and "was not even mentioned on the House or Senate floor." Further,

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[1] Budget Circular No. A–25 provides, in relevant part, that:

"(1) Where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large, a charge shall be imposed * * *."

[2] The parties here refer to subsection (a)(2) of the circular, which provides:

"(2) No charge should be made for services when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefitting broadly the general public."

[3] Article 14 of the Convention, to which the United States is a signatory, guarantees to vessels of contracting States, the right of innocent passage through the territorial sea, which in the United States refers to the sea between the shoreline and the 3-mile limit. The territorial sea is included as part of the "navigable waters of the United States" under section 11 of the Act.

it is alleged that the Government Operations Committee of the U.S. Senate and the American Bar Association have raised serious questions as to the propriety of Title V.[4] While some question may have been raised in some quarters regarding user charge programs, Title V has never been repealed and remains as law today. Title V has not only been found to be a constitutional "delegation of legislative power" by a U.S. Court of Appeals,[5] but has also received the support of the President of the United States and interested committees of Congress, as well as the Comptroller General of the United States.[6] Moreover, other Federal agencies have repeatedly looked to Title V for the authority to establish fee programs. For example, the Department of Defense, the Federal Aviation Agency, and the Federal Communications Commission have all adopted schedules of fees pursuant to the authority of Title V. On the basis of the resounding support and approval that Title V and the imposition of user fees in general have received from the three branches of the Federal Government, any suggestion of "impropriety" as the one lodged by NWC, must be rejected.

Since Title V by its express terms is addressed to all Federal agencies and grants all the authority necessary to to promulgate user charges, the point raised by ICPL that the Water Quality Improvement Act of 1970 contains no separate grant of authority which would allow the Commission to impose fees is certainly not controlling. Having considered and, we believe, refuted the challenge to the Commission's authority to issue the proposed rule, we move now to a paragraph-by-paragraph consideration of § 542.9.

Paragraph (a) of proposed § 542.9 briefly outlines the scope of the new rule. No comments are directed to this particular paragraph. In order to conform the language of paragraph (a) to changes that will be effected in subsequent paragraphs of the rule, however, we have incorporated certain minor revisions into paragraph (a) as finally promulgated.

Paragraph (b) would establish when the application and certification fees must be paid. While the commentators did not address themselves to this paragraph, we believe some revisions are in order. In addition to changes made to reflect amendments which are incorporated into later paragraphs, a provision has been added to paragraph (b) advising applicants that applications which are returned "for additional information or corrections will not require an additional application fee when resubmitted." We believe that the addition of this stipulation does not only establish what is a fair and reasonable approach to resubmitted applications but also will avoid needless and time consuming inquiries on the matter. Thus, only one fee will be required for each application submitted.

Paragraph (c) would provide that the fees are only payable in terms of U.S. dollars and would set forth the various methods of payment. No objections were raised regarding this paragraph nor do we feel that any revisions are necessary. Accordingly, paragraph (c) will be adopted as originally proposed.

Paragraph (d), as proposed, establishes the basic application fee and sets forth the gross tonnage schedule for computing the vessel certification fee. A number of parties challenge the level of fees proposed by the Commission, especially the graduated schedule of certification fees. ICPL and NWC suggest that it would be more equitable to apply the same certification fee for all vessels rather than a graduated scale since allegedly the cost of issuing certificates does not vary with the size of the vessel. AWO, on the other hand, contends that the fee schedule set out in the proposed regulation "unreasonably and arbitrarily discriminates against owners and operators of smaller vessels". AWO believes that, based on the value of the certificate to the recipient, there should be a more significant differential in fees between large vessels and small vessels, such as towing vessels and barges. AWO further submits that "the fees seem far higher than necessary to meet the Commission's costs in carrying out its certification program." ATA, Lykes, and NWC also appear to share this view.

ATA believes that there should be only one charge for both the filing of the application and the issuance of the certificate(s) and that it should not exceed $10. Lykes is of the opinion that a certification fee of $5 per barge is excessive and suggests that a $1 per barge certification fee would be more equitable. AWO, in urging that the Commission revamp its fee schedule, recommends that application fees of a fixed amount per ton of all the vessels covered by an application, without any additional "per vessel" certification fee, "would be fair, equitable and appropriate." It is also suggested that, "in order to prevent undue burdens on any one applicant", a reasonable ceiling be established on the total fees that may be charged for a single application. BIMCO, in an emotional appeal, opposes any assessments of user fees on the ground that requiring owners and operators to "participate in the expenses for processing the applications and issuing * * * the certificates, is most unreasonable."

In establishing the schedule of fees the Commission attempted to implement the Congressional directive, contained in Title V, that fees be equitable "taking into consideration direct and indirect cost to the government, value to the recipient, public policy or interest served and other pertinent facts." A review of our schedule of fees and the comments of the parties directed thereto, however, has indicated the desirability of even more fully conforming that schedule to the standards of Title V, especially those which require the relating of the fees to the "value to the recipient" and the "public policy of interest served."

At the outset, we must point out that the establishment of a fee schedule which would accurately reflect the exact cost to be incurred by the government in processing each individual application and issuing the corresponding certificate(s) under General Order 27 is complicated by the fact that the Commission has presently had no experience under its oil pollution regulations and accordingly has no basis for determining salary and other administrative costs which must be allocated to the administration of its certification program. It must be remembered that General Order 27 did not go into effect until October 3, 1970, and, under the provisions of that general order, a steamship owners and operators need not file their applications for certificates of financial responsibility until December 31, 1970. The only logical approach the Commission can employ, at least at this point of time, is to relate the schedule of fees to the overall cost of administering the certification program, as evidenced by Commission funding related to that program. Only by taking the additional direct appropriations which the Commission has received this year to administer its responsibilities under section 11(p)(1) of the Act and the budget estimates for the next fiscal year can the Commission arrive at any approximation of the costs which must be recouped.

Using this approach we determined that the cost which shall be incurred by the Government in carrying out the provisions of section 11(p)(1) of the

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[4] The Committee allegedly found that the problem of charging fees for special services was too broad to be covered by general legislation such as Title V and recommended that fees be assessed only on the basis of individual investigation and legislation by appropriate committees.

[5] Aeronautical Radio, Inc. v. United States, 335 F. 2d 304 (C.A. 7, 1964).

[6] In May 1966, the President of the United States advising the heads of departments and agencies of the importance of assessing fees and charges for special services, stated that when the Federal Government provides special services for special groups "it is both good economics and good government to charge fees for these services."

Both the House and Senate Committees, in their reports on a 1969 appropriations bill for regulatory agencies, expressed their concern "that the Federal government is not receiving sufficient return for all the services it renders" and recommended that the agencies review their fee schedules with a view to making such increases or adjustments as may be warranted "to offset in part the increasing needs for direct appropriations for operating costs of the agencies." (H. Rept. 1348, 90th Cong., second session May 3, 1968).

The same concern as to "whether the activities resulting in special benefits or privileges are self-sustaining to the fullest extent possible" was more recently expressed by the Comptroller General of the United States in his Report to the Congress on the "Need to Improve Administration of Fees and Charges of Regulatory Agencies," wherein the policies and practices of the Federal Maritime Commission and six other regulatory agencies in assessing fees and charges for services which convey special benefits or privileges to identifiable recipients were reviewed to determine how effectively these agencies were implementing Title V and Circular No. A-25.

Act for 20 months will be in the neighborhood of $1,300,000. It must be remembered that the Commission's certification program will hardly be self-sustaining after the first year or 20 months of its operation since the application fee is a one time charge and there are no periodic certification renewal fees presently contemplated.[7]

Based on our estimated cost figure of $1,300,000 and consistent with the standards of Title V, we have arrived at an adjusted fee schedule which is as fair and equitable as administratively practicable. While the individual application fee remains at $100 we have, consistent with the "value to the certificate recipient" and the "public interest to be served" criteria, revised the certification fee schedule based on vessel tonnage to more accurately relate the applicant's certification fee to the risks his vessels create and his ability to pay. The revised fees adopted herein for all categories of vessels, with possibly one exception, are lower than those originally proposed. Moreover, in order that no one applicant incur too large a financial burden, we have inserted a provision establishing a $1,000 ceiling on the maximum certification fee assessable.

While obviously we have no way of determining the exact number of applications that will be filed or certificates that will be issued, we estimate, on the basis of the information that is available, that applications will be received from some 13,000 owners or operators for the certification of some 16,000 vessels. Admittedly, these projected figures represent the upper limit of presently predictable applications and vessels.[8] Calculated at $100 per application and an average of $10 per certificate, we estimate that the total sum which the Commission might expect to recover under the charges adopted herein is in the neighborhood of $1,400,000, which compares very favorably to the total estimated cost of $1,300,000, especially if one considers that the number of owners and vessels upon which the former figure is based may very well be exaggerated. It must also be pointed out that our projected cost figure does not take into account the Government's cost of enforcing the certification requirements.

While we will admit that certification fee schedule, geared as it is on a sliding scale based on the vessel's gross tonnage, may not be completely devoid of seeming or minor disparities, we feel that, considering the congressional directive and all other pertinent factors, it is a fair and equitable schedule. We might point out, however, that the Commission plans to exercise continuous scrutiny of the fees and readjustments may be undertaken in the future if they prove appropriate or desirable.

Finally, we have exempted from the payment of certification fees "vessels of persons engaged in the building, scrapping, or sale of vessels when such vessels are being held solely for sale or scrapping." We believe that such action is clearly warranted by public policy considerations. Since builders, sellers, and scrappers of vessels are daily involved in the transfer of vessels, to assess a certification for each vessel that comes into their possession would impose, we feel, an unreasonable financial burden on these persons. Moreover, in view of the fact that these persons are not engaged in the operation of vessels either for profit or pleasure, the certificates would have little "value" to these "recipients".

Paragraph (e), as proposed, simply states that the vessel certification, as set forth in the prior paragraph will apply in cases requiring the issuance of a new certificate. To accommodate the addition of new paragraph (e), which contains the fee schedule, we have relettered proposed paragraph (e) as paragraph (g). Further, in order to make it clear to all concerned that the $1,000 maximum total certification fee, provided for in paragraph (e), also applies to the issuance of new certificates and the replacement of old certificates, we would add the following to paragraph (g):

* * *: *Provided, however,* That, consistent with paragraph (e) of this section, the maximum total certification fee that an applicant will be assessed is $1,000.

Finally, we have added a new paragraph (f) to § 542.9 which provides that:

(f) Certification fees will be refunded, on request, if (1) the application is withdrawn prior to the issuance of the Certificate or (2) the Certificate is denied pursuant to § 542.7(b)(2). Payments in excess of the applicable application and/or certification fee will be refunded only if overpayment is $2 or more.

Although the Commission's proposed fee schedule expressly stated that the application fee "shall not be refundable", nowhere in the proposed rule is the applicant advised as to whether the certification fee is refundable. Since the certification fee, although tied to the overall cost of administering the oil pollution program, is a charge assessed for the issuance of certificates, it follows that if no certificates are in fact issued, no fee should be assessed. Under new paragraph (f) we are making it clear that the certification fees are generally refundable.

Retention of any payments "in excess of the applicable application and/or certification fee" when less than $2, is, we believe, clearly fair and reasonable in view of the fact that the cost of making a refund of less than $2, in terms of time and expense incurred by the staff, would exceed the amount of the refund.

In conclusion, the Commission believes that it has the authority under Title V to adopt a rule requiring the payment of fees for its certification of vessels under General Order 27. As a result of the comments filed, the proposed fee schedule and accompanying procedural rules have been revised. We are of the opinion that the fees set forth below are fully consistent with the standards of Title V and Budget Circular No. A-25. We recognize that the promulgation of these rules may place an additional financial burden on steamship owners and operators. In view of the nominal character of these fees, however, we do not believe that the burden is so substantial as to raise serious questions as to the validity or desirability of our action herein.

Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 552) and Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483(a)) as implemented by Bureau of the Budget Circular No. A-25, dated September 23, 1959, Part 542 of Title 46, Code of Federal Regulations is amended by the addition of a new § 542.9, reading as follows:

§ 542.9 Fees.

(a) This section establishes the application and certification fees which shall be imposed by the Federal Maritime Commission for processing Application Form FMC-224 and issuance of Certificates of Financial Responsibility (Oil Pollution).

(b) On or after the effective date of this section, every application filed pursuant to this part must be accompanied by the application and certification fees set forth in paragraphs (d) and (e) of this section. Fees for applications filed prior to the effective date of this section shall be paid before the requisite certificates are issued. Applications returned to applicants for additional information or corrections will not require an additional application fee when resubmitted.

(c) Fees are payable in terms of U.S. dollars and may be paid by check, draft, or postal money order made payable to the Federal Maritime Commission. Cash will not be accepted.

(d) Every Application Form FMC-224 shall be accompanied by an application fee of $100 which shall not be refundable.

(e) In addition to the application fee, a vessel certification fee for each vessel listed on the application, subject to a maximum total certification fee of $1,000 shall be paid by the applicant in accordance with the following gross tonnage schedule:

For each vessel over:	Fee
300 to 1,200 gross tons	$3
1,200 to 5,000 gross tons	5
5,000 to 10,000 gross tons	10
10,000 to 30,000 gross tons	15
30,000 gross tons	25

Provided, however, That there shall be no certification fee assessed for certificates issued to cover vessels of persons engaged in the building, scrapping, or sale of vessels when such vessels are being held solely for sale or scrapping.

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[7] It is due to this fact that the Commission cannot delay the imposition of user fees until such time as it has had experience under its oil pollution rules. Since the assessment of fees relating to the issuance of certificates of Financial Responsibility is generally speaking, a one time charge, delaying the promulgation of these rules would frustrate their very purpose.

[8] An estimate for all types of barges over 300 gross tons is included in our forecasted figures. Legislation is now pending, however, which would exempt "non-oil carrying barges" from the financial responsibility requirements of section 11(p)(1) of the Act and our implementing rules.

(f) Certification fees will be refunded, on request, if (1) the application is withdrawn prior to the issuance of the certificate or (2) the certificate is denied pursuant to § 542.7(b)(2). Payments in excess of the applicable application and/or certification fee will be refunded only if overpayment is $2 or more.

(g) In any case necessitating the issuance of a new certificate, such as, but not limited to, the addition of a vessel, change in name, or replacement of a lost certificate, the individual vessel fee, based on the particular vessel's gross tonnage, shall apply: *Provided, however,* That, consistent with paragraph (e) of this section, the maximum total certification fee that an applicant will be assessed is $1,000.

Effective date. The Commission believes good cause exists for the rule promulgated herein to become effective on less than 30 days' notice. Section 11 (p)(3) of the Act requires that the Commission accomplish the certification of vessels for financial responsibility by April 3, 1971. Since the fees provided herein are required to be submitted and received by the Commission before the requisite certificates can be issued, allowing the ordinarily required 30-day effective date notice would serve only to delay the issuance of the certificates, possibly to the prejudice and detriment of the steamship owners and operators themselves. Accordingly, these rules shall become effective upon publication in the FEDERAL REGISTER.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-17367; Filed, Dec. 24, 1970; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 25, 121]

[Docket No. 10745; Notice 70-48]

EMERGENCY SLIDE LIGHTING

Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Parts 25 and 121 of the Federal Aviation Regulations to exclude from the emergency lighting operating requirements, emergency slide lighting systems that are wholly contained within the slide itself and are automatically activated when the slide is deployed.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC-24, 800 Independence Avenue SW., Washington, DC 20590. All communications received on or before January 28, 1971, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Parts 123 and 135 of the Federal Aviation Regulations require compliance with the emergency lighting operating requirements of § 121.310(d). Therefore, this proposed amendment would affect those requirements for air travel clubs conducting operations under Part 123 and air taxi operators and commercial operators of small aircraft certificated under Part 135, when using large, passenger-carrying airplanes.

Section 121.310(d) requires, among other things, that emergency lights be operated automatically (in a crash landing or upon interruption of the airplane's normal electric power) and be operable manually both from the flight crew station and from a specified point in the passenger compartment. This requirement is applicable to emergency lights for emergency evacuation slides and for other means used to assist passengers to the ground from emergency exits. Insofar as is pertinent here, § 25.812(e) states a similar requirement.

After these requirements were adopted, equipment manufacturers developed lighting systems for emergency evacuation slides that are wholly contained (including the power supply) within the slide itself, and are automatically activated when the slide is deployed.

The FAA believes that these slide-lighting systems provide a level of safety comparable to that of the current regulations, though they do not comply with the standards in the present rule for automatic and manual operation. Since the wholly contained lighting system is activated when the slide is deployed, and serves no purpose unless the slide is deployed, there is no need to require either automatic or manual switching that is external to the slide. Accordingly, the FAA proposes to exclude such lighting systems from the provision of §§ 121.310 (d) and 25.812(e).

In consideration of the foregoing, it is proposed to amend Parts 25 and 121 of the Federal Aviation Regulations as follows:

1. By amending the introductory sentence of § 25.812(e) to read:

§ 25.812 Emergency lighting.

* * * * *

(e) Except for subsystems provided in compliance with paragraph (g) of this section that are wholly contained within the assist means, and that are automatically activated when the assist means is deployed, the emergency lighting system must be designed as follows:

* * * * *

2. By amending the introductory sentence of § 121.310(d) to read:

§ 121.310 Additional emergency equipment.

* * * * *

(d) *Emergency light operation.* Except for lights forming part of emergency lighting subsystems provided in compliance with § 25.812(g) of this chapter (as prescribed in paragraph (h) of this section) that are wholly contained within the assist means, and that are automatically activated when the assist means is deployed, each light required by paragraphs (c) and (h) of this section must comply with the following:

* * * * *

This amendment is proposed under the authority of sections 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(c), 1421, and 1424), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on December 18, 1970.

EDWARD C. HODSON,
Acting Director,
Flight Standards Service.

[F.R. Doc. 70-17409; Filed, Dec. 24, 1970; 8:47 a.m.]

[14 CFR Part 121]

[Docket No. 10746; Notice 70-49]

PICTORIAL DISPLAYS IN RECURRENT TRAINING

Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Part 121 of the Federal Aviation Regulations to authorize the use of pictorial displays for visual aircraft preflight inspection in recurrent training for pilots and flight engineers.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC-24, 800 Independence Avenue SW., Washington, DC 20590. All communications received on or before March 1, 1971, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Delta Air Lines, Inc., petitioned the FAA for authorization to use pictorial means instead of visual inspection to accomplish the preflight inspection training required under Part 121 and Appendices E and F to Part 121. "Pictorial" in the sense used here means the use of color slides or their equivalent projected on a screen.

Delta states that the pictorial displays have the advantage, among other things, of showing abnormal as well as normal conditions, which allows greater flexibility in training and checking. The FAA agrees that the use of pictorial displays in recurrent training can be safety substituted for visual inspection, and that this authorization should be applicable to all Part 121 operators.

Section 121.427(d)(2)(ii) authorizes the flight engineer flight check, other than the preflight inspection, to be conducted in an airplane simulator or other training device. The proposed amendment would authorize the preflight inspection training to be conducted with the use of an airplane, or by the use of an approved pictorial means that realistically portrays the location and detail of inspection items, and provides for the display of abnormal conditions.

The flush paragraph after paragraph I(b)(2) of Appendix F to Part 121 would be amended to authorize the use of an

approved pictorial means for preflight inspection training in all cases in lieu of an actual visual inspection of the airplane. In addition, the proposal would continue the present provision which permits the preflight inspection requirement to be waived under § 121.441(d) if a flight engineer is a required flight crewmember for the particular type airplane.

It should be noted that this amendment does not apply to the training and to the proficiency checks required for initial, transition, and upgrade training, nor to routine line operations.

In consideration of the foregoing, it is proposed to amend Part 121 of the Federal Aviation Regulations as follows:

1. By adding a new sentence to § 121.427(d) (2) (ii) to read:

§ 121.427 Recurrent training.

* * * * *

(d) * * *

(2) * * *

(ii) * * * The preflight inspection may be conducted in an airplane, or by using an approved pictorial means that realistically portrays the location and detail of inspection items and provides for portrayal of abnormal conditions.

2. By amending the flush paragraph after section I(b) (2) of Appendix F to Part 121, to read:

Except as to those flight checks required by § 121.424(d) (2), the preflight inspection may be replaced by using an approved pictorial means that realistically portrays the location and detail of inspection items and provides for portrayal of abnormal conditions. If a flight engineer is a required flight crewmember for the particular type airplane, the visual inspection may be waived under § 121.441(d).

This amendment is proposed under the authority of sections 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1424), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on December 18, 1970.

EDWARD C. HODSON,
Acting Director,
Flight Standards Service.

[F.R. Doc. 70-17410; Filed, Dec. 24, 1970; 8:48 a.m.]

FEDERAL POWER COMMISSION

[18 CFR Parts 3, 32, 33, 34, 35, 36, 45, 159]

[Docket No. R-408]

SCHEDULES OF FEES TO BE PAID BY ELECTRIC PUBLIC UTILITY COMPANIES AND NATURAL GAS COMPANIES AND FOR MISCELLANEOUS SERVICES

Notice of Extension of Time

DECEMBER 16, 1970.

On December 11, 1970, the Independent Natural Gas Association filed a request for an extension of time to and including January 22, 1971, within which to file comments in the above-designated matter.

Upon consideration, notice is hereby given that the time is extended to and including January 22, 1971, within which any interested person may submit data, views, comments, and suggestions in writing to the notice of proposed rule making issued November 25, 1970 (35 F.R. 18324, Dec. 2, 1970), in the above-designated matter.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-17382; Filed, Dec. 24, 1970; 8:46 a.m.]

[18 CFR Part 154]

[Docket No. R-406]

PURCHASED GAS COST ADJUSTMENT PROVISIONS IN NATURAL GAS PIPELINE COMPANIES' FPC GAS TARIFF

Notice of Further Extension of Time

DECEMBER 16, 1970.

On December 11, 1970, the Independent Natural Association of America filed a request for a further extension of time to and including January 15, 1971, within which to file comments in the above-designated matter.

Upon consideration, notice is hereby given that the time is further extended to and including January 15, 1971, within which any interested person may submit data, views, comments, and suggestions in writing to the notice of proposed rule making issued October 22, 1970 (35 F.R. 16743, Oct. 29, 1970), in the above-designated matter.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-17381; Filed, Dec. 24, 1970; 8:46 a.m.]

Notices

DEPARTMENT OF AGRICULTURE

Office of the Secretary

LOUISIANA

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of Louisiana natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

LOUISIANA

Acadia.	Madison.
Avoyelles.	Morehouse.
Caldwell.	Ouachita.
Catahoula.	Pointe Coupee.
Concordia.	Rapides.
East Carroll.	Richland.
Evangeline.	St. Landry.
Franklin.	St. Martin.
Lafayette.	West Carroll.
La Salle.	

Emergency loans will not be made in the above-named counties under this designation after June 30, 1971, except subsequent loans to qualified borrowers who receive initial loans under this designation on or before that date.

Done at Washington, D.C., this 21st day of December 1970.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[F.R. Doc. 70-17372; Filed, Dec. 24, 1970; 8:45 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Supplement to Bureau of Land Management Manual 1510]

PROCUREMENT AND PURCHASING AGENTS, CONSTRUCTION AND SUPPLY SECTION

Delegation of Authority Regarding Contracts and Leases

Chief, Division of Administrative Services, et al.

A. Pursuant to the authority contained in Bureau Manual 1510.03C, the following are hereby redelegated the authorities contained in Bureau Manual 1510.3B2C in the amounts shown:

1. Procurement and Purchasing Agents, Construction and Supply Section:

a. May procure necessary supplies and services up to $2,500 and from established sources (GSA, FSS, etc.) not to exceed $10,000.

B. The authorities contained herein may not be redelegated.

C. This delegation of authority is effective on the date of publication in the FEDERAL REGISTER.

EDWARD G. BYGLAND,
Director, PSC.

[F.R. Doc. 70-17364; Filed, Dec. 24, 1970; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

GABON

Notice of Finding Regarding Foreign Social Insurance or Pension System

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to aliens, subject to the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)), for any month after they have been outside the United States for 6 consecutive calendar months.

Section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)) provides that section 202(t)(1) shall not apply to any individual who is a citizen of a foreign country which the Secretary of Health, Education, and Welfare finds has in effect a social insurance or pension system which is of general application in such country and under which (A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and (B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

Pursuant to authority duly vested in the Commissioner of Social Security by the Secretary of Health, Education, and Welfare, and redelegated to him, the Director of the Bureau of Retirement and Survivors Insurance has approved a finding that Gabon, beginning June 1, 1964, has a social insurance system of general application which pays periodic benefits on account of old age, retirement, or death, and under which citizens of the United States, not citizens of Gabon, who leave Gabon, are permitted to receive such benefits or their actuarial equivalent at the full rate without qualification or restriction while outside that country.

Accordingly, it is hereby determined and found that Gabon has in effect beginning with June 1, 1964, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

This revises the finding with respect to Gabon published in the FEDERAL REGISTER of April 13, 1962 (27 F.R. 3570).

Dated: December 16, 1970.

HUGH F. MCKENNA,
Director, Bureau of Retirement and Survivors Insurance.

[F.R. Doc. 70-17396; Filed, Dec. 24, 1970; 8:46 a.m.]

MAURITIUS

Notice of Finding Regarding Foreign Social Insurance or Pension System

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to aliens, subject to the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)), for any month after they have been outside the United States for 6 consecutive calendar months.

Section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)) provides that section 202(t)(1) shall not apply to any individual who is a citizen of a foreign country which the Secretary of Health, Education, and Welfare finds has in effect a social insurance or pension system which is of general application in such country and under which (A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and (B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the acturial equivalent thereof while outside such foreign country without regard to the duration of the absence.

Pursuant to authority vested in the Commissioner of Social Security by the Secretary of Health, Education, and Welfare, and redelegated to him, the Director of the Bureau of Retirement and Survivors Insurance has approved a finding that Mauritius does not have a qualified social insurance or pension system, i.e., a system of general application that pays benefits without regard to the financial need of the beneficiary.

Accordingly, it is hereby determined and found that Mauritius does not have in effect a social insurance or pension system of general application which meets the requirements of section 202(t)(2)(A) of the Social Security Act (42 U.S.C. 402(t)(2)(A)).

Subparagraphs (A) and (B) of section 202(t)(4) of the Social Security Act (42

U.S.C. 402(t)(4) (A) and (B)) provide that section 202(t)(1) shall not be applicable to benefits payable on the earnings record of an individual who has 40 quarters of coverage under social security or who has resided in the United States for a period or periods aggregating 10 years or more. However, the provisions of subparagraphs (A) and (B) of section 202(t)(4) shall not apply to an individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies the provisions of subparagraph (A) of section 202(t)(2) but not the provisions of subparagraph (B) of section 202(t)(2).

By virtue of the finding herein, the limitation on payment of monthly benefits to aliens included in section 202(t)(1) does not apply to citizens of Mauritius receiving benefits on the earnings records of individuals who have 40 quarters of coverage under social security or who have resided in the United States for a period or periods aggregating 10 years or more.

Dated: December 16, 1970.

HUGH F. MCKENNA,
Director, Bureau of Retirement and Survivors Insurance.

[F.R. Doc. 70-17397; Filed, Dec. 24, 1970; 8:46 a.m.]

TANZANIA

Notice of Finding Regarding Foreign Social Insurance or Pension System

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to aliens, subject to the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)), for any month after they have been outside the United States for 6 consecutive calendar months.

Section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)) provides that section 202(t)(1) shall not apply to any individual who is a citizen of a foreign country which the Secretary of Health, Education, and Welfare finds has in effect a social insurance or pension system which is of general application in such country and under which (A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and (B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

Pursuant to authority duly vested in the Commissioner of Social Security by the Secretary of Health, Education, and Welfare, and redelegated to him, the Director of the Bureau of Retirement and Survivors Insurance has approved a finding that Tanzania does not have a social insurance or pension system which pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death.

Accordingly, it is hereby determined and found that Tanzania does not have in effect a social insurance or pension system which meets the requirements of section 202(t)(2)(A) of the Social Security Act (42 U.S.C. 402(t)(2)(A)).

Subparagraphs (A) and (B) of section 202(t)(4) of the Social Security Act (42 U.S.C. 402(t)(4) (A) and (B)) provide that section 202(t)(1) shall not be applicable to benefits payable on the earnings record of an individual who has 40 quarters of coverage under social security or who has resided in the United States for a period or periods aggregating 10 years or more. However, the provisions of subparagraphs (A) and (B) of section 202(t)(4) shall not apply to an individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies the provisions of subparagraph (A) of section 202(t)(2) but not the provisions of subparagraph (B) of section 202(t)(2).

By virtue of the finding herein, the limitation on payment of monthly benefits to aliens included in section 202(t)(1) does not apply to citizens of Tanzania receiving benefits on the earnings records of individuals who have 40 quarters of coverage under social security or who have resided in the United States for a period or periods aggregating 10 years or more.

Dated: December 16, 1970.

HUGH F. MCKENNA,
Director, Bureau of Retirement and Survivors Insurance.

[F.R. Doc. 70-17398; Filed, Dec. 24, 1970; 8:46 a.m.]

ZAMBIA

Notice of Finding Regarding Foreign Social Insurance or Pension System

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1) prohibits payment of monthly benefits to aliens, subject to the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)), for any month after they have been outside the United States for 6 consecutive calendar months.

Section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)) provides that section 202(t)(1) shall not apply to any individual who is a citizen of a foreign country which the Secretary of Health, Education, and Welfare finds has in effect a social insurance or pension system which is of general application in such country and under which (A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and (B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

Pursuant to authority vested in the Commissioner of Social Security by the Secretary of Health, Education, and Welfare, and redelegated to him, the Director of the Bureau of Retirement and Survivors Insurance has approved a finding that Zambia has a social insurance system of general application in effect which pays periodic benefits on account of old age, retirement, or death, but that under its social insurance system citizens of the United States, not citizens of Zambia, who leave Zambia, are not permitted to receive such benefits or their actuarial equivalent at the full rate without qualification or restriction while outside that country.

Accordingly, it is hereby determined and found that Zambia has in effect a social insurance system which is of general application in that country and which meets the requirements of section 202(t)(2)(A) of the Social Security Act (42 U.S.C. 402(t)(2)(A)), but not the requirements of section 202(t)(2)(B) of the Act (42 U.S.C. 402(t)(2)(B)).

Subparagraphs (A) and (B) of section 202(t)(4) of the Social Security Act (42 U.S.C. 402(t)(4) (A) and (B)) provide that section 202(t)(1) shall not be applicable to benefits payable on the earnings record of an individual who has 40 quarters of coverage under social security or who has resided in the United States for a period or periods aggregating 10 years or more. However, effective July 1, 1968, the provisions of subparagraphs (A) and (B) of section 202(t)(4) shall not apply to an individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies the provisions of subparagraph (A) of section 202(t)(2) but not the provisions of subparagraph (B) of section 202(t)(2).

By virtue of the finding herein, the provisions of subparagraphs (A) and (B) of section 202(t)(4) do not apply to citizens of Zambia.

Dated: December 16, 1970.

HUGH F. MCKENNA,
Director, Bureau of Retirement and Survivors Insurance.

[F.R. Doc. 70-17399; Filed, Dec. 24, 1970; 8:46 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-346]

TOLEDO EDISON CO. AND CLEVELAND ELECTRIC ILLUMINATING CO.

Notice of Application for Construction Permit and Facility License

The Toledo Edison Co., 420 Madison Avenue, Toledo, OH 43601, and The Cleveland Electric Illuminating Co., 55 Public Square, Cleveland, OH 44101, pursuant to section 104(b) of the Atomic Energy Act of 1954, as amended, have

filed an application dated August 1, 1969, for a construction permit and facility license to authorize construction and operation of a pressurized water nuclear reactor on the applicants' approximately 900-acre site on the southwest shore of Lake Erie, about 21 miles east of Toledo and about 9 miles northwest of Port Clinton, in Ottawa County, Ohio.

The proposed reactor, designated by the applicants as the Davis-Besse Nuclear Power Station (the station), is designed for initial operation at approximately 2,633 megawatts thermal, with a net electrical output of approximately 872 megawatts.

The Toledo Edison Co. and The Cleveland Electric Illuminating Co. as tenants in common will share undivided ownership of the station and the site, with each sharing the costs of construction and operation of the station. Toledo Edison will have complete responsibility for the design, installation and operation of the facility.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Ida Rupp Public Library, Port Clinton, Ohio.

Dated at Bethesda, Md., this 4th day of December 1970.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[F.R. Doc. 70-16672; Filed, Dec. 10, 1970; 8:46 a.m.]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Notice of Extension of Time for Owners or Operators of Certain Barges To File Applications

Section 542.4(b) of Federal Maritime Commission General Order 27 (46 CFR Part 542) provides that an applicant desiring to obtain a Certificate of Financial Responsibility (Oil Pollution) pursuant to the provisions of section 11(p)(1) of the Water Quality Improvement Act of 1970 by April 3, 1971 [the effective date of section 11(p)(1)], should file a completed application Form FMC-224 with the Secretary, Federal Maritime Commission by December 31, 1970. Section 542.4 further provides that requests for special consideration, however, will be granted where applications involve bareboat charters or unusual situations, if good cause is shown by the applicant.

It has been brought to our attention that certain barges that are not self-propelled and that do not carry oil as cargo may be exempted from the financial responsibility requirements of the aforementioned statute by legislation pending in the Congress. In light of this pending legislation, and since the Commission is considering the assessment of nonrefundable application fees, it is our opinion that an unusual situation exists and that good cause has been shown for all owners or operators of non self-propelled barges which may be exempted under the pending legislation to be granted an extension of time beyond December 31, 1970, to file applications.

Accordingly, owners and operators of "nonoil carrying barges" need not file their applications for Certificates of Financial Responsibility (Oil Pollution) until February 15, 1971. For the purposes of this notice, a "nonoil carrying barge" is one which is not self-propelled and does not carry oil as cargo (in bulk or otherwise).

By order of the Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-17365; Filed, Dec. 24, 1970; 8:45 a.m.]

CIVIL SERVICE COMMISSION

DEPARTMENT OF AGRICULTURE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Agriculture to fill by noncareer executive assignment in the excepted service the position of Assistant General Counsel for Rural Development and Conservation.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-17368; Filed, Dec. 24, 1970; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Agriculture to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary for Marketing and Consumer Services.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-17369; Filed, Dec. 24, 1970; 8:45 a.m.]

DEPARTMENT OF THE TREASURY

Notice of Title Change in Noncareer Executive Assignment

By notice of November 3, 1970, F.R. Doc. 70-14786, the Civil Service Commission authorized the Department of the Treasury to fill by noncareer executive assignment the position of Assistant to the Assistant Secretary. This is notice that the title of this position is now being changed to Deputy to Assistant Secretary, Office of Assistant Secretary (Economic Policy).

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-17370; Filed, Dec. 24, 1970; 8:45 a.m.]

FEDERAL RESERVE SYSTEM

AMERICAN BANKSHARES CORP.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by American Bankshares Corp., which is a bank holding company located in Milwaukee, Wis., for prior approval by the Board of Governors of the acquisition by applicant of 80 percent or more of the voting shares of Menomonee Falls Bank, Menomonee Falls, Wis.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Chicago.

By order of the Board of Governors, December 21, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-17377; Filed, Dec. 24, 1970; 8:45 a.m.]

FIRST VIRGINIA BANKSHARES CORP.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by First Virginia Bankshares Corp., which is a bank holding company located in Arlington, Va., for prior approval by the Board of Governors of the acquisition by applicant of 90 percent or more of the voting shares of First Bank & Trust Co., Colonial Heights, Va., a proposed new bank.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Richmond.

By order of the Board of Governors, December 17, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-17378; Filed, Dec. 24, 1970; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

[Rev. S.O. 994; ICC Order 39, Amdt. 4]

CHICAGO AND NORTH WESTERN RAILWAY CO.

Car Distribution

Upon further consideration of ICC Order No. 39 (The Chicago and North Western Railway Co.) and good cause appearing therefor:

It is ordered, That:

ICC Order No. 39 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1971, unless otherwise modified, changed or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1970, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 22, 1970.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[F.R. Doc. 70-17403; Filed, Dec. 24, 1970; 8:47 a.m.]

[Rev. S.O. 994; ICC Order 47, Amdt. 3]

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD CO.

Car Distribution

Upon further consideration of ICC Order No. 47 (The Chicago, Rock Island and Pacific Railroad Co.) and good cause appearing therefor:

It is ordered, That:

ICC Order No. 47 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1971, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1970, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 22, 1970.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[F.R. Doc. 70-17405; Filed, Dec. 24, 1970; 8:47 a.m.]

[Rev. S.O. 994; ICC Order 43, Amdt. 4]

FRANKFORT AND CINCINNATI RAILROAD CO.

Car Distribution

Upon further consideration of ICC Order No. 43 (Frankfort and Cincinnati Railroad Co.) and good cause appearing therefor:

It is ordered, That:

ICC Order No. 43 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1971, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1970, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 22, 1970.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[F.R. Doc. 70-17404; Filed, Dec. 24, 1970; 8:47 a.m.]

[Rev. S.O. 994; ICC Order 19, Amdt. 4]

LOUISVILLE AND NASHVILLE RAILROAD CO.

Car Distribution

Upon further consideration of ICC Order No. 19 (Louisville and Nashville Railroad Co., Birmingham Southern Railroad Co.) and good cause appearing therefor:

It is ordered, That:

ICC Order No. 19 be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1971, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1970, and that it shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 21, 1970.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[F.R. Doc. 70-17402; Filed, Dec. 24, 1970; 8:46 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 22, 1970.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42095—*Export and import rates to and from North Atlantic ports.* Filed by Traffic Executive Association—Eastern Railroads, agent (No. 2991), for interested rail carriers. Rates on property moving on export and import class rates from and to North Atlantic ports, Albany and New York, N.Y.; Baltimore, Md.; Boston, Mass.; Norfolk and Richmond, Va., and Philadelphia, Pa., on the one hand, from and to Official (including Illinois), and Western Trunk Line (including extended zone C) territories, on the other.

Grounds for relief—Port equalization.

Tariffs—Supplements 80 and 152 to Traffic Executive Association—Eastern Railroads, agent, tariff ICC C-391 and 152, respectively.

FSA No. 42096—*Petroleum products to Rockford, Ill.* Filed by Williams Brothers Pipe Line Co., for interested carriers. Rates on petroleum products as described in the application, from points in Kansas and Oklahoma, to Rockford, Ill.

Grounds for relief—Market and carrier competition.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[F.R. Doc. 70-17401; Filed, Dec. 24, 1970; 8:46 a.m.]

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